

One of the early, and continued, architects of the domestic violence court concept was Judge Judith Kaye of New York State's highest court. She argued that battered women often have compelling and very practical reasons to dismiss charges against their attackers. She identified the fear, economic dependence, and even affection, which made prosecution of such cases in a traditional court setting extremely difficult.¹⁹ As this study found, the New York State system now serves as a model for domestic violence courts throughout the country.

Domestic Violence Court as a Unique Problem-Solving Court

Although the concept of domestic violence court originated in the problem-solving court era²⁰, there are basic differences between domestic violence courts and other forms of problem-solving or therapeutic courts. Those differences are so fundamental that while domestic violence courts are certainly properly characterized as a "specialized" court, they do not follow the therapeutic or problem-solving premise.

Most specialized courts follow a therapeutic model in which the emphasis is on rehabilitation of the offender.²¹ The focus is on the underlying causes or etiology of the offender's misconduct. The premise is that intense supervision and monitoring of the offender, coupled with the provision of treatment and resources, will solve address the underlying etiology of the offense and thus result in reduced recidivism.

¹⁹ Kaye, Judith S. and Susan K. Knipps, "Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach", 27 W. ST. U. L. REV. 1 (2000)

²⁰ Id.

²¹ See Berman, Greg and John Feinblatt (2005). *Good Courts: The Case for Problem Solving Justice*, New York: New Press.

Drug courts are the classic model.²² The court, and the judge in particular, not only prescribes the disposition of the offender but also continues to monitor the progress of that disposition in continuing regular court proceedings until the offender has successfully completed the treatment. The treatment team is actually part of the court and works collaboratively with the judge to monitor progress. Treatment is often outpatient but some programs provide residential treatment programs as well. In Washtenaw County, for example, our Juvenile Court operates a juvenile drug court that includes residential treatment of delinquent youth for as much as nine months.

Other specialized courts follow a similar therapeutic model. Examples include mental health courts²³, sobriety courts²⁴ (a form of drug court sub-specialized for alcohol abuse), homelessness courts²⁵, re-entry courts²⁶ and community courts²⁷.

Domestic violence courts, on the other hand, focus primarily on the victim rather than the offender. The initial emphasis is on the safety of the battered women and any children that are involved. The court also focuses on the accountability of the offender for his own misconduct rather than on exploring the etiology of that conduct. While rehabilitation may be a byproduct of the domestic court process, its origins lie more in a

²² Nolan, James L. Jr (2003). *Reinventing Justice: The American Drug Court Movement*, NJ: Princeton Univ. Press.

²³ Denckla, Derek and Greg Berman (2001), "Rethinking the Revolving Door: A Look at Mental Illness in the Courts", *Center for Court Innovation Think Piece*. Available online at www.communityjustice.org/uploads/documents/rethinkingtherevolvingdoor.pdf (last visited February 20, 2006)

²⁴ Hoffman, Harvey (2003). "Healing Drunk Drivers: Michigan's OUIL? Sobriety Drug Courts", *Michigan Bar Journal*, January 2003, 29-32. Available online at www.michbar.org/journal/pdf/pdf4article532.pdf (last visited February 20, 2006).

²⁵ Binder, Steven R. (2002) *The Homeless Court Program: Taking Court to the Streets*, Washington: American Bar Association.

²⁶ Maruna, Shadd and Thomas P. LaBel (2003) "Welcome Home? Examining the "Reentry Court" Concept from a Strengths-based Perspective", *Western Criminology Review* 4(2), 91-107. Available online at <http://wcr.sonoma.edu/v4n2/manuscripts/marunalebel.pdf> (last visited February 20, 2006).

²⁷ Curtis, Richard (2000) *Dispensing Justice Locally: The Implementation and Effects of the Midtown Community Court*, New York: Routledge.

deterrence theory model. As a focus group at the Center for Court Innovation described it:²⁸

... [D]omestic violence courts do not view defendant rehabilitation as a high-priority part of the problem-solving process. This differs sharply from most problem-solving courts (with the possible exception of community courts). Rather, the mission of domestic violence courts concentrates more on the promotion of victim safety and offender accountability.

...

The primary difference concerned the basic dispositional processes in the court. In domestic violence court, unlike in most other problem-solving courts, the determination of guilt is an integral component, which often leads to an adversarial atmosphere in which defendants deny culpability and resist participation in community-based sanctions and services.

The domestic violence court is a rejection of the adversary model that is the basis for most of our justice systems. As Fritzler and Simon described this feature in 2000:²⁹

A final, unique characteristic of domestic violence cases that necessitates special handling by the courts is that these cases may suffer from a strict application of our adversarial legal system, which focuses on procedural issues and society's goals of deterrence, punishment, and retribution at the expense of the victim's welfare. The adversarial system may be better suited to litigating crimes between strangers and certain other issues brought before our court system. However, it may be less effective when dealing with crimes between intimate partners where the adversarial approach may exacerbate the problem and increase the danger to victims.

Domestic Violence Court Models

By 2000, Keilitz (2000) estimated that over 300 judicial systems nationwide had some sort of specialized processes to handle domestic violence cases and they were all

²⁸ "How Do Domestic Violence Courts Compare to Other Problem-Solving Courts", Center for Court Innovation, online at www.courtinnovation.org/index.cfm?fuseaction=Document.viewDocument&documentID=598&documentTopicID=23&documentTypeID=10 (last visited February 17, 2006)

²⁹ Fritzler, Randal and Leonore Simon (2000) "Creating a Domestic Violence Court: Combat in the Trenches", 37:1 *Court Review* 28 at 33. Available online at <http://aja.ncsc.dni.us/courtrv/cr37/cr37-1/CR9FritzlerSimon.pdf> (last visited February 22, 2007)

regarded as some form of domestic violence court.³⁰ However, as the Keilitz survey pointed out, the term had a great divergence in meaning:

“Although many of these 103 courts have instituted some change in organization, procedures, or judicial assignment to managing domestic violence cases, relatively few appear to have implemented a more comprehensive system for their domestic violence caseloads. For example, only 27 of the courts reported having intake, case screening, a specialized calendar, and a judicial review calendar to monitor compliance with court ordered batterer intervention programs. Only seven of these courts also assign judges exclusively to hear domestic violence cases and have an automated system to identify related cases. These reports from the 103 courts suggest that the concept of a domestic violence court is not yet well developed or defined among the court community. Although many practitioners working in and with courts have adopted the term “domestic violence court,” only a small number of courts have taken the more holistic approach to domestic violence case management that signifies an intention to function as a domestic violence court. The findings from the follow-up telephone interviews, presented in Part IV of this report, reinforce the conclusion that the implementation of specialized processes for domestic violence cases is proceeding without common understandings of what components and resources are needed for a coherent and effective case management system.”

This study indicates that the variety in these courts and their processes persists today.

In spite of the large variance in domestic violence court structures and processes, some distinct models have been identified. Sack³¹ categorized the models and subcategories as 1) Dedicated Civil Protection Order Docket; 2) Criminal Model; and 3) Domestic Violence Courts with Related Caseload. Within the latter, she separates the a) Integrated Domestic Violence Court; b) Unified Family Court; and c) Coordinated Court.

The *Dedicated Civil Protection Order Docket* model is easily the most common. “CPOs”, or what is referred to in many states as “PPOs” (Personal Protection Orders), are

³⁰ Keilitz, *supra* note 10.

³¹ Sack, Emily (2002) *Creating a Domestic Violence Court: Best Practices*. San Francisco: Family Violence Protection Fund. Available online at www.endabuse.org/programs/healthcare/files/FinalCourt_Guidelines.pdf. See also Littel, *supra* note 2.

statutorily-enabled Court restraining orders to prevent an abuser from having contact with the petitioning victim.³² As an example, the Michigan statute directly addresses the relationship between the parties and the specific types of conduct that can be enjoined:

“(1) . . . an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner from doing 1 or more of the following:

- (a) Entering onto premises.
- (b) Assaulting, attacking, beating, molesting, or wounding a named individual.
- (c) Threatening to kill or physically injure a named individual.
- (d) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.
- (e) Purchasing or possessing a firearm.
- (f) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
- (g) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.
- (h) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.
- (i) Engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.
- (j) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.”³³

These petitions and the hearings alleging violations of protection orders make up much of the court's domestic violence docket. With this model in larger jurisdictions, these cases are assigned to one judge who only handles protection orders. In smaller

³² See Little *supra* note 3.

³³ MCL 600. 2950(1)

jurisdictions, the assigned judge may also have other types of caseloads but the protection order caseload is maintained separately as a specialized docket.

The *Criminal Model* is also a common form of domestic violence specialized courts. This model separates criminal cases which charge domestic violence for specialized handling by a particular judge or judges. Many states have defined domestic violence as a separate crime, either as a misdemeanor or a felony or both. For example, in Michigan the statute creates a special category of misdemeanor assault for domestic assaults³⁴ and allows the prosecutor to charge repeated offenses as a felony.³⁵ The Michigan statutes also enhance the punishments for felony assaults when the victim is a spouse or in a personal relationship.³⁶ Many courts have created specialized misdemeanor domestic violence dockets, while others have criminal dockets that handle both misdemeanors and felonies.

The general idea of the *Domestic Violence Courts with Related Caseload* model is to merge the civil proceedings related to divorce/custody cases and protection orders with related criminal proceedings such as domestic assault. However, this model can take at least three separate forms. In an *Integrated Domestic Violence Court* model one judge handles criminal domestic violence cases and the accompanying civil matters. In a *Unified Family Court* model no criminal matters are assigned separately but all civil matters involving the same family are assigned to a single judge. In a *Coordinated Court* model both criminal domestic violence and related civil matters are assigned to the same court division but not to the same judge.

³⁴ MCL 750.81(2) and (4).

³⁵ MCL 750.81(4)

³⁶ MCL 750.81a(2) and (3).

The various models have been otherwise identified. Heiling³⁷ described the four models she reviewed as: 1) Pretrial Conferences Only; 2) All Non-Evidentiary Appearances; 3) All Appearances in Specialized Court; and 4) Combined Criminal and Civil Jurisdiction. Still other organizations³⁸ have taken a broader view and described models to include 1) Dedicated Courts and Prosecutors; 2) Integrated Court Systems; 3) Dedicated Processing; and 4) Dedicated Resources.

The State of Domestic Violence Courts in 2000

By 2000, many of the arguments against the concept of a domestic violence court had been overcome. Much of the earlier resistance to the concept, especially by judges, had waned and more judges accepted the idea that this modified form of therapeutic courts was justified by the “unique characteristics” of domestic assaults.³⁹

In 2000 Susan Keilitz, working with the National Center for State Courts, conducted a national survey of domestic violence courts.⁴⁰ She concluded:

“Our examination of specialized processes, structures, and services for domestic violence cases in 103 courts across the country indicates a field undergoing rapid and differentiated change. Although the concept of specializing court structures and operations for domestic violence cases is gaining momentum, the court community has yet to develop and test models based on a shared vision about the goals of domestic violence courts or specialized processes. The most common reasons courts cite for implementing specialized processes for domestic violence cases are improved assistance to victims, enhanced victim safety, and increased batterer accountability. Yet, in the majority of courts, these goals are not

³⁷ Heiling, Julia A., “Specialized Criminal Domestic Violence Courts”, Minnesota Center Against Violence and Abuse, 2005. Available online at www.vaw.umn.edu/documents/helling/helling.html (last visited January 14, 2007).

³⁸ “Specialized Domestic Violence Court Systems”, Stop Violence Against Women, 2006, online at www.stopvaw.org/Specialized_Domestic_Violence_Court_Systems.html?SEC={932A5424-32B4-4D2D-AB62-359D54B911B3}&Type=B_BASIC (last visited January 14, 2007).

³⁹ Fritzler, *supra* note 28

⁴⁰ Keilitz, *supra* note 10.

supported by the key services and practices needed for survivor safety and batterer accountability.”⁴¹

The Keilitz survey obtained responses from 103 courts from 22 states who indicated that they had some form of domestic violence model in place. The distribution in the Keilitz survey was as follows⁴²:

Arizona (2 courts)	New Mexico (12 courts)
California (12 courts)	North Carolina (10 courts)
Colorado (1 court)	Nevada (6 courts)
Connecticut (1 court)	New York (1 court)
Delaware (1 court)	Oklahoma (1 court)
Florida (9 courts)	Pennsylvania (3 courts)
Iowa (5 courts)	Rhode Island (1 court)
Illinois (9 courts)	Texas (1 court)
Kansas (3 courts)	Utah (1 court)
Michigan (2 courts)	Washington (20 courts)
Minnesota (1 court)	Wisconsin (1 court)

One purpose of this paper is to review available information to assess 1) whether the states with courts identified by Keilitz in 2000 are still operating those specialized domestic violence courts and 2) whether other states have made any significant additions to the stock of domestic violence courts around the country.

The Current Status of Identified Domestic Violence Courts

The results of this study are shown in the attached table, **Domestic Violence Courts in the United States – 2007**. Although an effort was made to search publicly available resources, this does not purport to be an exhaustive survey of all existing domestic violence courts.

⁴¹ *Id.* at p.29.

⁴² *Id.* at p.11

This study first attempted to locate information about the courts indicated in the Keilitz survey. Where web sites are available for those courts, the Keilitz information has been supplemented with links. If further information is available about those courts, it is provided in the comments section as well.

The second phase of this study attempted to locate information about courts not existing or at least not disclosed in the 2000 Keilitz survey. Those additional courts are shown in italics in the table.

Fifty-one additional courts were added to the Keilitz list. Five states not previously identified as having domestic violence courts were added, including Alabama, Hawaii, Idaho, Massachusetts, and New Jersey. Some of the significant additions are described in the remainder of this report.

New York appears to have made the most strides in the development of domestic violence courts.⁴³ Some New York courts use the criminal model defined there as a “Domestic Violence Court” where a dedicated Judge presides over cases from arraignment through disposition and monitors offenders and their compliance with orders of protection. Eighteen counties use that system, the history of which is described by the New York court system:

“The first Domestic Violence Court in New York State opened in Brooklyn in 1996, handling felony-level domestic violence cases. Domestic Violence Courts are currently operating in Manhattan, Brooklyn, Albany, Troy, Glens Falls, Saratoga Springs, Syracuse, Binghamton, Auburn, Buffalo, Clarkstown, Spring Valley, Westchester, Queens, Bronx, and Erie, Nassau, and Suffolk Counties. Courts are also being planned in several other jurisdictions in New York State”.⁴⁴

⁴³ New York State Domestic Violence Courts Fact Sheet, New York State Division of Criminal Justice Series, January 2, 2007. Online at www.criminaljustice.state.ny.us/ofpa/domviolcrtfactsheet.htm (last visited January 14, 2007).

⁴⁴ Id.

On a larger scale, New York has established at least 28 domestic violence courts using the integrated model identified as “Integrated Domestic Violence Courts”.⁴⁵ The problem is also on a large scale since in New York City alone over 20% of all criminal cases are domestic assaults.⁴⁶ In New York’s integrated model, one judge handles criminal domestic violence cases and all related family issues, such as custody, visitation, civil protection orders and divorces. The State claims that “[s]ince their inception in 2001, Integrated Domestic Violence Courts have served over 5,000 families and seen over 22,000 cases in New York State.”⁴⁷ Court officials estimate an even higher amount of service and claim that “[s]ince their inception, IDV Courts have handled over 33,000 cases and served over 7,000 families.”⁴⁸ The Courts assert that “more than three quarters of the residents of New York State live in counties served by these courts” and that an additional nine Integrated Domestic Violence Courts in the planning stages.⁴⁹ The New York system is also the most sophisticated in the country and employs a technologically advanced inter-connectivity system.⁵⁰ The New York system has been extensively

⁴⁵ Id. “Integrated Domestic Violence Courts are currently operating in Rensselaer, Westchester, the Bronx, Rochester, Syracuse, Schenectady, Yonkers, Queens, and Cayuga, Wyoming, Nassau, Suffolk, Richmond, Clinton, Essex, Franklin, Tompkins, Erie and Suffolk Counties. In addition, courts are operating in Kings, Fulton, Hamilton, Montgomery, Oswego, Broome, Chautauqua, Niagara, Orange, and St. Lawrence Counties and will be opening in additional locations across the State.”

⁴⁶ See “Symposium, Women, Children, and Domestic Violence: Current Tensions and Emerging Issues”, 27 *Fordham Urb. L.J.* 565 (2000).

⁴⁷ New York State Domestic Violence Courts Fact Sheet, *supra* note 43.

⁴⁸ Kluger, Judy Harris. “Integrated Domestic Violence Courts”, New York State Unified Court System. May 2006. Online at www.courts.state.ny.us/ip/domesticviolence/index.shtml (last visited January 14, 2007)

⁴⁹ Id.

⁵⁰ Young, Pamela, “An Informed Response: An Overview of the Domestic Violence Court Technology Application and Resource Link”, Center for Court Innovation, 2001. Available online at www.communitycourts.org/uploads/documents/Informed%20Response1.pdf (last visited January 12, 2007).